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OFFICE OF PETITIONS

In re Application of :
Nauta et al. :
Application No. 10/823,978 : ON PETITION
Filed: 14 April, 2004 :
Attorney Docket No. U 015133-0 :

This is a decision in reference to the "RENEWED REQUEST TO WITHDRAW HOLDING OF ABANDONMENT and REPLY TO DECISION ON PETITION" filed on 12 September, 2006.

The petition is again **DISMISSED**.

This application became abandoned on 13 October, 2005, for failure to submit a proper response to the final Office action mailed on 12 July, 2005, which set a three (3) month shortened statutory period for reply. A reply was filed on 5 October, 2005, but the reply did not place the application in *prima facie* condition for allowance. An Advisory Action was mailed on 31 October, 2005. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 15 March, 2006. The petition filed on 26 June, 2006, was dismissed on 6 September, 2006.

Petitioners again assert that the holding of abandonment should be withdrawn because the final Office action is "improper".

Petitioners' argument has been considered, but is not persuasive.

The showing of record is insufficient to withdraw the holding of abandonment.

As stated previously, the showing of record is that a proper reply to the final Office action was not timely filed. The only proper reply to a final Office action is a Notice of Appeal and fee, Request for Continuing Examination and submission under 37 CFR 1.114, a continuing application, or an amendment placing the application in *prima facie* condition for allowance. The examiner

previously determined that the amendment filed on 5 October, 2005, does not place the case in *prima facie* condition for allowance.

In this case, petitioner submitted an amendment after final rejection. However, it is clear from 37 CFR 1.116 that abandonment of an application is risked when an amendment after a final Office action is filed. The rule clearly indicates that the mere filing of an amendment does not relieve petitioner of the duty of taking appropriate action to save the application from abandonment.

As petitioner did not timely file a proper reply, the showing of record application was properly held abandoned.

Petitioner should note that MPEP 1002.02(c).(3) prescribes the filing of petitions invoking the supervisory authority of the Director of the USPTO under 37 CFR 1.181 involving any *ex parte* action or requirement in a patent application by the examiner which is not subject to appeal (37 CFR 1.191) and not otherwise provided for, as for example (a) prematureness of final rejection, MPEP § 706.07(c).

Alternatively, petitioner may wish to consider filing a petition to revive the application, accompanied by a proper reply.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**¹

Further correspondence with respect to this matter should be addressed as follows:

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¹ 37 CFR 1.181(f).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D Wood", written in a cursive style.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions